
(2003) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : Civil Revision No. 808 of 2003

Gulabchand and Others

APPELLANT

Vs

Shri Varni Digambar Jain Gurukul Samiti

RESPONDENT

Date of Decision : 25-08-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16
Civil Procedure Code, 1908 (CPC) — Section 115, 47

Citation : (2004) 2 MPHT 99 : (2004) 1 MPLJ 521

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Ravish Agrawal, for the Appellant; V.R. Rao, for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.

This revision u/s 115, CPC is directed against the order dated 14-7-2003 passed by IX ADJ, Jabalpur in Execution Case No. 1/2001, whereby objection u/s 47, CPC was dismissed.

With reference to agreement (Annexure A-1) the Arbitrators were appointed to resolve the dispute between the parties. The Arbitrators made a faisala (Annexure A-2). This faisala was put to execution by the non-applicant vide Annexure A-3. During the pendency of this execution before the Court below on 22-8-2001, parties again referred the matter to the Panchayat Sabha vide agreement (Annexure A-7). This agreement was signed by the office bearers of the non-applicant Samiti. Arbitrators Ratanlal, Mool-chand Luhadia and Ashok Kumar Patni commenced arbitral proceedings immediately. However, on 23-8-2001, a resolution was passed by the non-applicant Samiti that it sticks to the earlier faisala (Annexure A-2) and further in arbitral proceedings are not required. On the basis of the resolution dated 23-8-2001 (Annexure A-15), non-applicant Samiti abstained from further participating arbitration proceedings and

insisted execution of faisala (Annexure A-2). The applicant filed objection u/s 47, CPC (Annexure A-4) that the award has been superseded by the parties by appointing another set of Arbitrators to resolve the differences. The validity of the faisala was seriously being disputed. Therefore, the parties agreed to appoint three persons of highly reputed to resolve the differences aforesaid. It was agreed that this would supersede the present Panch Faisala (Annexure A-2). Therefore, the Pancha Faisala (Annexure A-2) can not be executed as it does not now subsists. This objection u/s 47, CPC was resisted by the non-applicant by filing a reply (Annexure A-5), the contention is that the agreement superseding the Panch Faisala (Annexure A-2) was not valid as the agreement (Annexure A-7) was not executed by the non-applicant Samiti. Therefore, vide resolution dated 23-8-2001 (Annexure A-15), it was rescinded.

Agreement dated 22-8-2001 (Annexure A-7) was signed by the office bearers of the non-applicant Samiti as well as the office bearers of Prashikshan Sansthan. It was also signed by one of the Panch of the arbitral proceedings. Annexures A-8, A-9, A- 10, affidavits of Ratanlal, Moolchand Luhadia and Ashok Kumar Patni are to the effect that with reference to the agreement (Annexure A-7), executed in their favour by the respective parties, the arbitral proceedings commenced on 22-8-2001 itself and the representatives of non-applicant Samiti also participated. In view of this, it was contended that an unilateral act of rescinding the agreement (Annexure A-7) vide resolution dated 23-8-2001 (Annexure A-15) will not be valid and in any case u/s 16 of the Arbitration and Conciliation Act (for short "the Act") the non-applicant Samiti ought to have agitate the grievance before the Arbitrators only.

Section 16 of the Act confers jurisdiction to Arbitral Tribunal to rule on its jurisdiction. The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. Where the Panch Faisala (Annexure A-2) was rescinded by fresh agreement dated 22-8-2001 (Annexure A-7) and the Arbitrators proceeded with the arbitration on 22-8-2001 itself, subsequent act of rescinding the agreement vide resolution dated 23-8-2001 (Annexure A-15) needs adjudication by Arbitrators only. The Apex Court while reading the judgment Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd., with approval in Hindustan Petroleum Corporation. Ltd. v. Mis. Pinkcity Midway Petroleums, 2003 AIR SCW 3558, concluded :--

"15. The question then would arise : what would be the role of the Civil Court when an argument is raised that such an arbitration clause does not apply to the facts of the case in hand ? Learned Counsel for the appellant contends that it is a matter which should be raised before the Arbitrator who is competent to adjudicate upon the same and the Civil Court should not embark upon an inquiry in regard to the applicability of the arbitration clause to the facts of the case. While learned Counsel appearing for the respondent contends that since the applicability of the arbitration clause to the facts of the case goes to the very root

of the jurisdiction of the reference to arbitration, this question will have to be decided by the Civil Court before referring the matter to arbitration even in cases where there is admittedly an arbitration clause. The answer to this argument, in our opinion, is found in Section 16 of the Act itself. It has empowered the Arbitral tribunal to rule on its own jurisdiction including rule on any objection with respect to the existence or validity of the arbitration agreement. That apart, a Constitution Bench of this Court in *Konkan Railway* (supra) with reference to the power of the Arbitrator u/s 16 has laid down thus:

"It might also be that in a given case the Chief Justice or his designate may have nominated an Arbitrator although the period of thirty days had not expired. If so, the Arbitral Tribunal would have been improperly constituted and be without jurisdiction. It would then be open to the aggrieved party to require the Arbitral Tribunal to rule on its jurisdiction. Section 16 provides for this. It states that the Arbitral Tribunal may rule on its own jurisdiction. That the Arbitral Tribunal may rule "on any objections with respect to the existence or validity of the arbitration agreement" shows that the Arbitral Tribunal's authority u/s 16 is not confined to the width of its jurisdiction, as was submitted by learned Counsel for the appellants, but goes to the very root of its jurisdiction. There would, therefore, be no impediment in contending before the Arbitral Tribunal that it had been wrongly constituted by reason of the fact that the Chief Justice or his designate had nominated an Arbitrator although the period of thirty days had not expired and that, therefore, it had no jurisdiction."

It is clear from the language of the Section, as interpreted by the Constitution Bench judgment in *Konkan Railway* (supra) that if there is any objection as to the applicability of the arbitration clause to the facts of the case, the same will have to be raised before the concerned Arbitral Tribunal. Therefore, in our opinion, in this case the Court below ought not to have proceeded to examine the applicability of the arbitration clause to the facts of the case in hand but ought to have left that issue to be determined by the Arbitral Tribunal as contemplated in Clause 40 of the Dealership Agreement and as required under Sections 8 and 16 of the Act."

Therefore, the grievance, if any as to the subsequent agreement dated 22-8-2001 (Annexure A-7), the non-applicant Samiti should have raised objections u/s 16 before the newly appointed Arbitrators requesting to rescind the agreement dated 22-8-2001 (Annexure A-7) by which the execution proceedings with reference to *Panch Faisala* (Annexure A-2) have been terminated. Subject to adjudication of grievance u/s 16 only, the non-applicant Samiti could proceed further with the execution on the basis of *Panch Faisala* (Annexure A-2).

Consequently, the Court below erred in rejecting the objection u/s 47 of the CPC, so far it relates to non-executability of *Panch Faisala* (Annexure A-2) at this juncture. The revision succeeds and is allowed. The impugned order passed by the Court below is set aside. Instead, parties are set at liberty to agitate their

grievance u/s 16 of the Act before the Arbitrators appointed with reference to agreement dated 22-8-2001 (Annexure A-7).

Parties to bear their costs. Counsel fees as per rule or certificate (whichever is less).